In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, APPELLANT,
v.
THE AMERICAN SUGAR REFINING COMPANY of New York. } No. 269.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

STATEMENT.

During the months of June, July, August, and September, 1903, the American Sugar Refining Company made certain importations of sugar through the port of New York. Duties were assessed thereon by the collector at the rates provided in section 209 of the tariff act of July 24, 1897 (30 Stat., 168), and the entries liquidated accordingly. Against this action the company protested, claiming that said merchandise was dutiable on the basis fixed by the reciprocity treaty between the United States and Cuba, signed December 11, 1902, which provided for a 20 per cent reduction, but which had not at the time of said protest been

approved by Congress, as it in terms required, or proclaimed by the President.

The Board of General Appraisers sustained the action of the collector (R., 8), but the Circuit Court reversed their decision (R., 11, 12), holding that the treaty and the act of Congress of December 17, 1903, passed in execution of it, went into effect retroactively on April 10, 1903, the tenth day after ratifications of the treaty were exchanged. From that judgment an appeal has been taken to this court.

The treaty, as signed, provided (33 Stat., 2136, 2142):

ARTICLE XI.

> The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first of January, 1903, *and the convention shall go into effect on the tenth day after the exchange of ratifications*, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

By a supplemental convention signed January 26, 1903 (33 Stat., 2145), it was provided:

> The respective ratifications of the said convention shall be exchanged as soon as possible, and within two months from January 31, 1903.

By resolution of March 19, 1903, the Senate added the following amendment at the end of Article XI:

> This convention shall not take effect until the same shall have been approved by the Congress.

December 17, 1903 (33 Stat., 3), Congress passed an act entitled "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," which provided (sec. 1):

> That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring that he has received such evidence, *and thereupon, on the tenth day after exchange of ratifications of such convention* between the United States and the Republic of Cuba, *and so long as the said convention shall remain in force*, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which *are now* imported into the United States free of duty, *shall continue* to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States *shall be admitted* at a reduction of twenty

per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue *during the term of said convention* preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: *And provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an act of Congress originating in said House.

The same day (December 17, 1903) the President issued his proclamation (33 Stat., 2136), which, after setting forth the treaty and the act of Congress and reciting the above facts, together with the fact that

ratifications of said convention had been exchanged on March 31, 1903, declared:

> And whereas satisfactory evidence has been received by the President of the United States that the Republic of Cuba has made provision to give full effect to the articles of said convention:
>
> Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in conformity with the said act of Congress, do hereby declare and proclaim the said convention, as amended by the Senate of the United States, to be in effect *on the tenth day from the date of this my proclamation.*

The supplemental convention was also proclaimed the same day. (33 Stat., 2145.)

ARGUMENT.

The Treaty and Act were intended to be prospective and coterminous in their operation.

There can be no doubt as to the meaning of the treaty. The original stipulation that it was to take effect ten days after the exchange of ratifications was superseded by the amendment of the Senate, ratified and approved by Cuba, that the treaty should not take effect until approved by the Congress. Clearer language could not have been used to indicate the intention of the parties that the treaty should operate prospectively from said approval. As will hereafter be shown, their subsequent action has been in accordance with that intention.

Looking now at the act, we find that it was passed, as its title states, to carry into effect the treaty; that its provisions in regard to the importation of articles from Cuba are identical with those of the treaty, and are expressly declared to be coterminous therewith, and that the language of the act is entirely prospective. It provides that the President, whenever he *shall* receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the treaty, *shall* issue his proclamation declaring that he has received such evidence, and "*thereupon* on the tenth day after exchange of ratifications of such convention," "*and so long as said convention shall remain in force*," articles

imported from Cuba *shall* be admitted as therein provided.

The words "on the tenth day after exchange of ratifications" are in themselves prospective. But they are said to be retrospective because it appears from the proclamation of the President, *issued after the passage of the act*, that ratifications had been therefore exchanged. And herein seems to lie the true explanation of the use of those words, namely, that Congress was not advised at the time of the passage of the act that ratifications had been exchanged on March 31, 1903. The exchange of ratifications on that date was a matter of which the Executive alone was cognizant, and appears never to have been communicated to either House or published in any manner prior to the passage of the act.

On March 31, 1903—the date ratifications were exchanged—neither House of Congress was in session. The Fifty-seventh Congress terminated March 4, 1903, and the special session of the Senate of the Fifty-eighth Congress, which was convened March 5, 1903, adjourned March 19, 1903, the day of the adoption of the resolution requiring the approval of Congress to the treaty before it should take effect. (37 Cong. Rec., 1, 140.)

October 20, 1903, the President issued a proclamation convening a special session of Congress for the purpose of considering the treaty. The proclamation read (33 Stat., 2319):

> Whereas by the resolution of the Senate of March 19, 1903, the approval by Congress

of the reciprocal Commercial Convention between the United States and the Republic of Cuba signed at Habana on December 11, 1902, *is necessary before the said convention shall take effect;*

And whereas it is important to the public interests of the United States that the said convention *shall become operative as early as may be:*

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power vested in me by the Constitution, do hereby proclaim and declare that an extraordinary occasion requires the convening of both Houses of the Congress of the United States at their respective chambers in the city of Washington on the 9th day of November next, at 12 o'clock noon, to the end that they may consider and determine whether the approval of the Congress shall be given to the said convention.

Pursuant to this proclamation Congress convened November 9, 1903, and on November 10 the President transmitted to the two Houses the following messages (37 Cong. Rec. 163, 164):

To the Senate and House of Representatives:

I have convened the Congress that it may consider the legislation necessary to put into operation the commercial treaty with Cuba, *which was ratified by the Senate at its last session, and subsequently by the Cuban Government.* I deem such legislation demanded not only by our interest, but by our honor. We can not with propriety abandon the course upon which we have have so wisely embarked. When the

acceptance of the Platt amendment was required from Cuba by the action of the Congress of the United States, this Government thereby definitely committed itself to the policy of treating Cuba as occupying a unique position as regards this country. It was provided that when the island became a free and independent republic she should stand in such close relations with us as in certain respects to come within our system of international policy; and it necessarily followed that she must also to a certain degree become included within the lines of our ecomic policy. Situated as Cuba is, it would not be possible for this country to permit the strategic abuse of the island by any foreign military power. It is for this reason that certain limitations have been imposed upon her financial policy, and that naval stations have been conceded by her to the United States. The negotiations as to the details of these naval stations are on the eve of completion. They are so situated as to prevent any idea that there is the intention ever to use them against Cuba, or otherwise than for the protection of Cuba from the assaults of foreign foes, and for the better safeguarding of American interests in the waters south of us.

These interests have been largely increased by the consequences of the war with Spain, and will be still further increased by the building of the Isthmian Canal. They are both military and economic. The granting to us by Cuba of the naval stations above alluded to is of the utmost importance from a military standpoint, and is proof of the good faith with which Cuba is treating us. Cuba has made great progress

since her independence was established. She has advanced steadily in every way. She already stands high among her sister republics of the New World. She is loyally observing her obligations to us, and she is entitled to like treatment by us.

The treaty submitted to you for approval secures to the United States economic advantages as great as those given to Cuba. Not an American interest is sacrificed. By the treaty a large Cuban market is secured to our producers. It is a market which lies at our doors, which is already large, which is capable of great expansion, and which is especially important to the development of our export trade. It would be indeed shortsighted for us to refuse to take advantage of such an opportunity, and to force Cuba into making arrangements with other countries to our disadvantage.

This reciprocity treaty stands by itself. It is demanded on considerations of broad national policy as well as by our economic interest. It will do harm to no industry. It will benefit many industries. It is in the interest of our people as a whole, both because of its importance from the broad standpoint of international policy, and because economically it intimately concerns us to develop and secure the rich Cuban market for our farmers, artisans, merchants, and manufacturers. Finally, it is desirable as a guaranty of the good faith of our nation toward her young sister Republic to the south, whose welfare must ever be closely bound with ours. We gave her liberty. We are knit to her by the memories of the blood and the

courage of our soldiers who fought for her in war; by the memories of the wisdom and integrity of our administrators who served her in peace and who started her so well on the difficult path of self-government. We must help her onward and upward, and in helping her we shall help ourselves.

The foregoing considerations caused the negotiation of the treaty with Cuba and its ratification by the Senate. They now with equal force support the legislation by the Congress which by the terms of the treaty is necessary to render it operative. A failure to enact such legislation would come perilously near a repudiation of the pledged faith of the nation.

I transmit herewith the treaty, *as amended by the Senate and ratified by the Cuban Government.*

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

To the Senate and House of Representatives:

It being required by the resolution of the Senate of March 19, 1903, that the approval of Congress shall be given to the reciprocal commercial convention between the United States and Cuba, signed December 11, 1902, *before the same shall take effect*, I transmit herewith the text of the said convention as amended by the Senate.

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

Neither of these messages contained any intimation that ratifications had been exchanged; nor did the text of the treaty transmitted therewith. (For text of treaty transmitted see H. R. Document

No. 2, 58th Cong., 1st sess., set out in Appendix hereto.) Congress was advised by said communications that the treaty as amended by the Senate had been ratified by the Cuban Government, but there was absolute silence as to the exchange of ratifications. Doubtless the President regarded that fact as unimportant, in view of the amendment of the Senate requiring the approval of Congress before the treaty should take effect. It will be observed that he did not transmit or in anywise refer to the supplemental treaty, by which the time for exchanging ratifications of the original treaty was extended from January 31 to March 31, 1903. The House, having had nothing to do with the making of that treaty and it not having been published, can not be presumed to have been officially cognizant of it. There was laid before them only the original treaty, which provided that ratification should be exchanged on or before January 31, 1903, and that it should take effect ten days thereafter, supplemented by the amendment added by the Senate that the treaty should not take effect until approved by the Congress. It was in the light of this information that the House acted. If the appellee's contention is correct, the House must have intended that the act should take effect ten days after January 31, 1903, while the Senate, which was advised of the supplemental treaty, must be supposed to have intended it to take effect ten days after March 31, 1903. But manifestly the view of both Houses was that the stipulation in the treaty as to the date on which rati-

fications should be exchanged had been superseded by the amendment requiring the approval of Congress before the treaty should take effect; and, not having been advised of the exchange of ratifications, they naturally supposed that that action, which is usually the final step in the making of a treaty, had been deferred until Congress should act.

It will be observed that appellee itself was not advised at the time of its protest, October 20, 1903, as to the exchange of ratifications on March 31, 1903. It said in its protest (R., 6) that ratifications of the treaty had been exchanged, "as provided therein," "on or before the *31st day of January, 1903*, to go into effect on the tenth day after said exchange of ratifications." Clearly it knew nothing of the supplemental treaty extending the time for exchanging ratifications and the actual exchange made in pursuance thereof on March 31, 1903.

The only other explanation of the reference in the act to the exchange of ratifications is that it was a mere inadvertence. That Congress did not intend the act to be retroactive appears very clearly from the history of this legislation.

November 12, 1903, Mr. Payne introduced a bill (H. R. 1921) "to carry into effect a convention between the United States and the Republic of Cuba, signed December 11, 1902," which was referred to the Committee on Ways and Means. (37 Cong. Rec., 223.) The bill was reported without amendment by that committee November 13, 1903 (id, 234), and was

passed by the House without amendment November 19, 1903 (id., 389). The three reports which accompanied the bill when reported to the House are set out in the Appendix.

The committee reports and the debates in the House (37 Cong. Rec., 259, 260, 273, 293, 323, 361) show that it was assumed by everybody that the proposed act would operate prospectively. The idea that the bill would have a retrospective operation never seemed to cross the mind of anyone. The debate was confined to the questions raised as to the authority of the treaty-making power to make treaties affecting the tariff and the advisability of making the reductions proposed by the treaty.

The bill as passed by the House was laid before the Senate November 20, 1903, and referred to the Committee on Foreign Relations. (37 Cong. Rec., 396, 399.) It was reported back without amendment November 23, 1903 (id., 417; S. Rep. 2, 58th Cong., 1st sess., set out in Appendix), made special order the same day (id., 433), and called up from time to time during the remainder of the special session (id., 479, 489, 508, 531), but went over as unfinished business with practically no debate.

The second session of the Fifty-eighth Congress convened December 7, 1903, and on that day, in pursuance of the special order adopted at the previous session, the Senate resumed consideration of the bill. (38 Cong. Rec., 11, 13.) Mr. Cullom, chairman of the Committee on Foreign Relations, who had charge of

the bill, in calling the matter to the attention of the Senate, said (id., 13):

> The bill to carry into effect the reciprocity treaty between the United States and Cuba, having passed the House, has been favorably reported from the Committee on Foreign Relations and is now before the Senate for consideration.
>
> This bill in terms authorizes the President, after receiving evidence that Cuba has made provision to give full effect to the reciprocity treaty between the two countries, to issue his proclamation declaring that he has received such evidence, and *thereafter* the products of Cuba now admitted free of duty by the United States shall continue to be so admitted, and all other products of the Republic of Cuba shall during the life of said convention be admitted at a reduction of 20 per cent.
>
> That is the real substance of the bill, although it undertakes to recite all the provisions of the treaty in which the United States, on its part, makes concessions to the Republic of Cuba.

Debate thereon was continued until December 16, 1903 (38 Cong. Rec., 13, 33, 37, 65, 93, 116, 153, 178, 239, 277), when, in accordance with the special order, a vote was taken, and the bill was passed without amendment (id., 286). On the 17th it was approved by the President.

It thus appears that the bill passed both Houses exactly as introduced.

As in the House, so in the Senate, the debates show that the proposed act was intended to operate prospectively. The explicit declaration of Mr. Cullom on this point above quoted clearly voiced the sentiment of the entire body. There was no debate or dispute about it. It was assumed as a matter of course. The only discussion, aside from the debate as to whether the bill should have been referred to the Committee on Foreign Relations or the Committee on Finance, was as to the scope of the treaty-making power and the constitutional rights of Congress in matters of commerce and revenue, and the propriety of making a reduction in the Cuban tariff at that time.

While the bill was under discussion the fact was adverted to that the proposed act would make a reduction of about eight millions a year in duties upon importations from Cuba. This would have meant, if the act was to operate retrospectively and go into effect nine months previous, that a refund of about six millions would have to be made. Yet not a word was said nor any provision made in that respect. It is impossible under these circumstances to believe that Congress had any such intention.

The propriety of referring to the history of this legislation in order to ascertain the intention of Congress is affirmed by numerous authorities.

> *United States* v. *Union Pacific R. R. Co.*, 91 U. S., 72, 79.
>
> *Platt* v. *Union Pacific R. R. Co.*, 99 U.S., 48, 64.
>
> *American Net and Twine Company* v. *Worthington*, 141 U. S., 468, 474.

Church of the Holy Trinity v. *United States*, 143 U. S., 457, 463.
United States v. *Burr*, 159 U. S., 78, 85.
United States v. *Laws*, 163 U. S., 258, 262.
Dunlap v. *United States*, 173 U. S., 65, 75.

In *Platt* v. *Union Pacific Railroad* (*supra*) the court said:

> In endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.

In *Franklin Sugar Refining Co.* v. *United States*, now before this court on appeal, the Circuit Court for the Eastern District of Pennsylvania held that the treaty in question did not go into effect until approved by Congress in the act of December 17, 1903, and could not be construed to have a retrospective operation.

The Treaty and Act took effect simultaneously on the tenth day after the proclamation of the President.

By its terms the treaty was not to take effect until approved by Congress. Congress gave its approval in the form of an act specifically regulating importations from Cuba in accordance with the terms of the treaty. It was a conditional approval, however. The President was first to ascertain whether Cuba had made provision to give full effect to the convention, issue his

proclamation declaring that he had received such evidence, and "thereupon on the tenth day after exchange of ratifications of such convention" the new arrangement was to begin.

The President, being aware of the fact of which Congress was apparently ignorant—that ratifications had been exchanged—nevertheless had to construe the law so as to carry into effect the substantial purpose of Congress. Notwithstanding its mistake as to the exchange of ratifications, it was clear Congress intended, not only that the new arrangement should not begin to operate until Cuba had made provision to carry out her part of the contract, but that ten days' notice should be given before it should take effect, as originally provided in the treaty. The President, therefore, did the only logical thing under the circumstances—having ascertained that Cuba had made the necessary provision, he declared in his proclamation that "in [substantial] conformity with the said act of Congress" the treaty should take effect on the tenth day therefrom.

It was clearly within the constitutional authority of Congress to make the operation of the act dependent upon the ascertainment and proclamation by the President of the fact that Cuba had made provision to carry into effect the treaty. (*Field* v. *Clark*, 143 U. S., 649.)

Even if the approval of Congress and the action of the President were not strictly in accordance with the terms of the treaty, no one but Cuba could take exception thereto. The interpretation and enforcement of treaty stipulations of this character are matters for the

determination of the political departments of the Government, and the courts must respect their decision.

Foster v. *Neilson*, 2 Pet., 253, 309.
The Cherokee Tobacco, 11 Wall., 616, 621.
Taylor v. *Morton*, 2 Curtis, 454; 2 Black, 481.
Head Money Cases, 112 U. S., 580, 598.
Whitney v. *Robertson*, 124 U. S., 190, 195.
Botiller v. *Dominguez*, 130 U. S., 238, 247.
The Chinese Exclusion Case, 130 U. S., 581, 600, 602.
Fong Yue Ting v. *United States*, 149 U. S., 698, 721.

Cuba, however, has concurred in the action of this Government. On the 17th day of December the President of Cuba also issued his proclamation, stating that Congress had approved the treaty in accordance with requirement of Article XI, and declaring that the treaty should take effect in Cuba on the day named in the proclamation of the President of the United States—December 27, 1903. A copy of said proclamation, as published in the Official Gazette of the Republic of Cuba of December 18, 1903 (omitting the text of the treaty), is set out in the Appendix, together with copies of the correspondence between the Acting Secretary of State and the Minister from Cuba relative to the action taken by Cuba to put the treaty into effect.

If, therefore, the act of Congress of December 17, 1903, be held to operate retrospectively, the intention of Congress to have it operate coterminously with the treaty will be defeated and the reciprocal arrangement

impaired. The reduction provided for by the act upon importations into the United States from Cuba was made in consideration of the reductions guaranteed by the treaty upon importations into Cuba from the United States, and was to continue only so long as the treaty was in force. Congress certainly can not be held to have authorized a gratuitous reduction of duty for the preceding eight months, which must be done in order to sustain appellee's contention. The absurdity of its reading of the act would seem to be demonstrated. To effectuate the intention of Congress, the act must be held to have commenced to operate on the day the treaty took effect in the two countries—December 27, 1903.

United States v. Burr, 159 U. S., 78, controlling.

In the Burr case the tariff act of 1894 specifically required its retrospective application. Although it did not become a law until August 28, 1894, it provided in terms that it should take effect on August 1, 1894. Yet the court disregarded the letter of the statute for its spirit, ascertaining the intention of Congress from the history of the act and all the circumstances of the case.

In that case (pp. 82–83) the general rule was conceded to be, as stated in *United States* v. *Heth* (3 Cranch, 398, 413), that—

> words in a statute ought not to have a retrospective application unless they are so clear,

> strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature can not be otherwise satisfied.

It was also conceded (p. 83)—

> that the usual course in tariff legislation has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future date at which the statutes are to become operative.

The court said the question was not one of construction but of intention, and in view of the unfortunate consequences which would flow from a literal application of the statute, held that it should not be so applied. Among other things, the court said (p. 85):

> Again, a higher rate of duty was imposed on many articles by the act of 1894 than under the prior act, and a lower rate of duty on others, while some that were free were made dutiable, as, for instance, the article of sugar. *Must duties paid between August 1 and August 28 be refunded where the rate was lowered and assessed where the rate was raised, or a duty imposed where none existed? Clearly not.*
>
> These considerations lead to the conclusion that the act ought not to be construed to operate retrospectively contrary to the general rule, and so as to turn what was intended to secure a period of time to enable business men to act understandingly under the new law into a source of confusion and mischief to the contrary.

These observations apply with equal force to the present case. If the act is to be construed so as to

make it operate retrospectively, then, it would seem, 20 per cent of the duties collected upon importations from Cuba during the preceding eight months ought to be refunded. But no provision has been made by Congress to accomplish that object, and, as no money can be drawn out of the Treasury but in consequence of appropriations made by law (Const. Art. I, sec. 9), the only persons who would benefit by a retrospective construction would be those who, like this importer, took a chance on the inchoate treaty and made a protest, assuming that such a protest is valid.

This case is even stronger than the Burr case. The present statute does not, as did the act of 1894, show on its face a retrospective intention. It can be said to be retrospective only by inference based upon the assumption that Congress was aware of the fact that ratifications had been exchanged, and at the cost of consistency with its direction as to the proclamation of the President. If Congress knew that ratifications had been exchanged several months previous, why say that the treaty should take effect on the *tenth* day after such exchange? It was evidently anticipating something yet to occur, and, as observed in the Burr case, intended to give adequate notice of the proposed change in order that business men, as well as the officers of the Government, might act understandingly under the new law, and not change it into "a source of confusion and mischief to the contrary."

The provision in the treaty requiring the approval of Congress was valid and operative.

It will be observed that the original ground of protest in this case was that the clause in the treaty stipulating that it should not take effect until approved by Congress was inoperative. (Rec., 6.) Since the passage of the act to carry into effect the treaty, however, the appellee apparently contends that the language of the act is all controlling. The correct view necessarily is that as the act was passed to carry into effect the treaty, the language of the act is to be construed in the light of the provisions of the treaty.

The approval of Congress was of course not necessary to the *validity* of the treaty, but by the terms of the treaty such approval was necessary to its *taking effect.*

If, as this court has held, Congress may make the operation of a law depend upon the happening of a certain event (*Field* v. *Clark*, 143 U. S., 649), by a parity of reasoning the treaty-making power may make the operation of a treaty depend upon a like contingency.

Furthermore, this court has recognized the fact that while some treaties are self-executing, others may require legislation by Congress to make them effective.

Foster v. *Neilson*, 2 Pet., 253.
United States v *Arredondo*, 6 Pet., 691.

It is unnecessary to determine to which class the treaty in question essentially belongs, since it in terms stipulates that it shall not take effect until approved by the Congress, and in voicing its approval Congress has enacted the legislation necessary to carry it into execution.

If the stipulation that the treaty should not take effect until approved by Congress was invalid, the treaty never became operative, unless it is to be held that it went into effect contrary to the intention of the parties. And if the treaty never became operative, neither did the act, as the act was intended to stand or fall with the treaty, and expressly provided that the rates of duty fixed thereby should continue in force only "so long as the said convention shall remain in force."

The Protest was invalid.

It is settled that treaties which require legislation to carry them into effect remain inoperative until such legislation has been enacted, and that the officers of the Government must continue to follow the existing law, even if inconsistent with the stipulations of such a treaty, until Congress shall have made provision for its enforcement. (2 Butler on Treaty-making Power, secs. 363, 366, et seq. and cases cited.)

The duties in question were therefore properly collected, and no valid protest could be made. Nor should the subsequent act of Congress, even if construed to be

retroactive, be held to validate the protest. As a practical matter, it was impossible for Congress to put the act into effect during the months that had elapsed, except by providing for a refund of duties paid. It would be unjust to those who paid duties without protest under the law then in force, and who can not now recover them back, to hold that one who made a protest not warranted by the existing law may do so.

The judgment of the Circuit Court should be reversed.

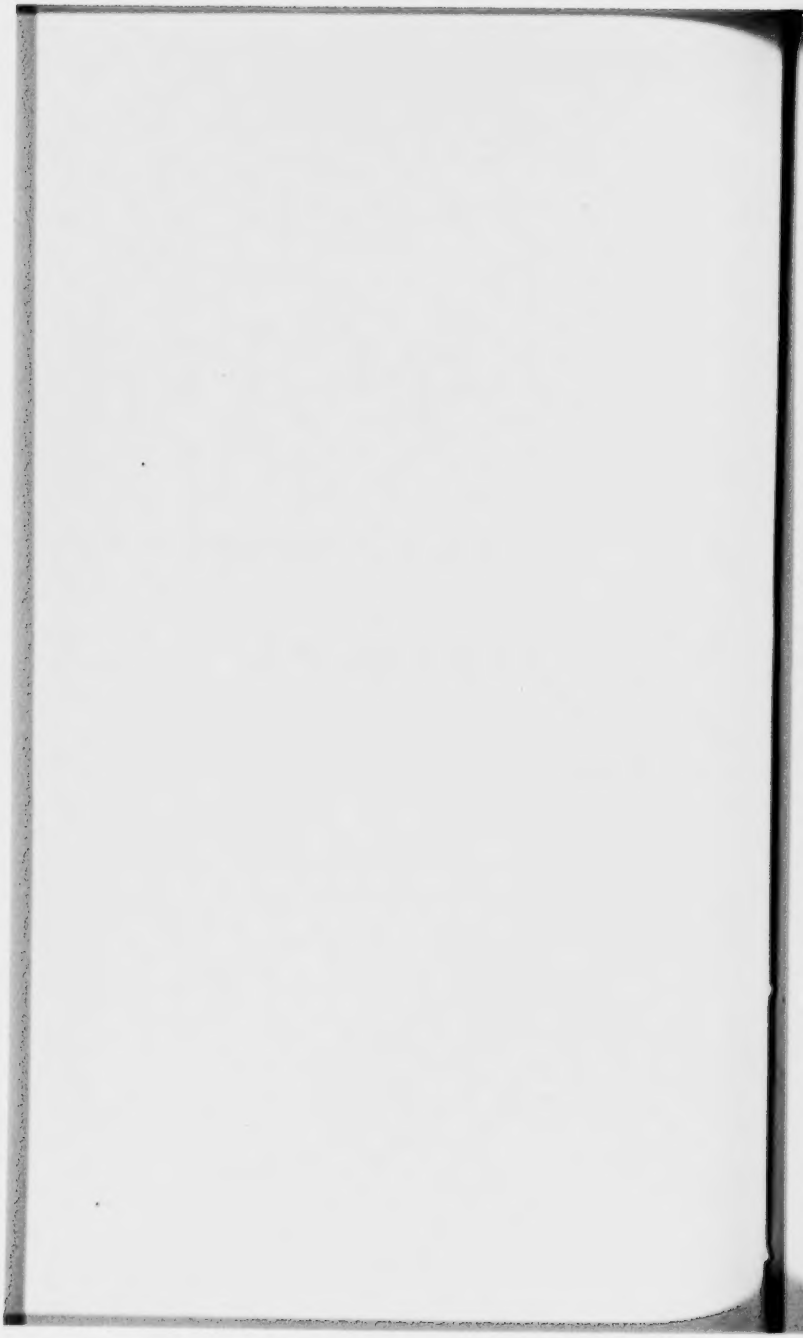
Respectfully submitted.

WILLIAM H. MOODY,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

WILLIAM R. HARR,
Special Assistant to the Attorney-General.

APPENDIX.



58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 2.

RECIPROCAL COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE TEXT OF RECIPROCAL COMMERCIAL CONVENTION BETWEEN THE UNITED STATES AND CUBA, SIGNED DECEMBER 11, 1902.

NOVEMBER 10, 1903.—Referred to the Committee on Ways and Means and ordered to be printed.

To the Senate and House of Representatives:

It being required by the resolution of the Senate of March 19, 1903, that the approval of Congress shall be given to the Reciprocal Commercial Convention between the United States and Cuba, signed December 11, 1902, before the same shall take effect, I transmit herewith the text of the said Convention as amended by the Senate.

THEODORE ROOSEVELT.

WHITE HOUSE, *November 10, 1903.*

The President of the United States of America and the President of the Republic of Cuba, animated by the desire to strengthen the bonds of friendship between the two countries, and to facilitate their commercial intercourse by improving the conditions of trade between them, have resolved to enter into a convention for that purpose, and have appointed their respective Plenipotentiaries, to-wit:

The President of the United States of America, the Honorable General Tasker H. Bliss;

The President of the Republic of Cuba, the Honorable Carlos de Zaldo y Beurmann, Secretary of State and Justice, and the Honorable José M. Garcia y Montes, Secretary of the Treasury;

who, after an exchange of their full powers found to be in good and due form, have, in consideration of and in compensation for the respective concessions and engagements made by each to the other as

hereinafter recited, agreed and do hereby agree upon the following Articles for the regulation and government of their reciprocal trade, namely:

ARTICLE I.

During the term of this convention, all articles of merchandise being the product of the soil or industry of the United States which are now imported into the Republic of Cuba free of duty, and all articles of merchandise being the product of the soil or industry of the Republic of Cuba which are now imported into the United States free of duty, shall continue to be so admitted by the respective countries free of duty.

ARTICLE II.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of twenty percentum of the rates of duty thereon as provided by the Tariff Act of the United States approved July 24, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

ARTICLE III.

During the term of this convention, all articles of merchandise not included in the foregoing Article I and not hereinafter enumerated, being the product of the soil or industry of the United States, imported into the Republic of Cuba shall be admitted at a reduction of twenty per centum of the rates of duty thereon as now provided or as may hereafter be provided in the Customs Tariff of said Republic of Cuba.

ARTICLE IV.

During the term of this convention, the following articles of merchandise as enumerated and described in the existing Customs Tariff of the Republic of Cuba, being the product of the soil or industry of the United States imported into Cuba shall be admitted at the following respective reductions of the rates of duty thereon as now provided or as may hereafter be provided in the Customs Tariff of the Republic of Cuba:

Schedule A.

To be admitted at a reduction of twenty-five (25) per centum:

Machinery and apparatus of copper or its alloys or machines and apparatus in which copper or its alloys enter as the component of chief value; cast iron, wrought iron and steel, and manufactures thereof; articles of crystal and glass, except window glass; ships and water borne vessels of all kinds, of iron or steel; whiskies and brandies; fish, salted, pickled, smoke or marinated; fish or shellfish, preserved in oil or otherwise in tins; articles of pottery or earthenware now classified under Paragraphs 21 and 22 of the Customs Tariff of the Republic of Cuba.

Schedule B.

To be admitted at a reduction of thirty (30) percentum:

Butter; flour of wheat; corn; flour of corn or corn meal; chemical and pharmaceutical products and simple drugs; malt liquors in bottles; non-alcoholic beverages; cider; mineral waters; colors and dyes; window glass; complete or partly made up articles of hemp, flax, pita, jute, henequen, ramie, and other vegetable fibers now classified under the paragraphs of Group 2, Class V, of the Customs Tariff of the Republic of Cuba; musical instruments; writing and printing paper, except for newspapers; cotton and manufactures thereof, except knitted goods (see Schedule C); all articles of cutlery; boots, shoes and slippers, now classified under Paragraphs 197 and 198 of the Customs Tariff of the Republic of Cuba; gold and silver plated ware; drawings, photographs, engravings, lithographs, cromolithographs, oleographs, etc., printed from stone, zinc, aluminium, or other material, used as labels, flaps, bands and wrappers for tobacco or other purposes, and all the other papers (except paper for cigarettes, and excepting maps and charts), pasteboard and manufactures thereof, now classified under Paragraphs 157 to 164 inclusive of the Customs Tariff of the Republic of Cuba; common or ordinary soaps, now classified under Paragraph 105, letters "A" and "B", of the Customs Tariff of the Republic of Cuba; vegetables, pickled or preserved in any manner; all wines, except those now classified under Paragraph 279 (a) of the Customs Tariff of the Republic of Cuba.

Schedule C.

To be admitted at a reduction of forty (40) per centum:

Manufactures of cotton, knitted, and all manufactures of cotton not included in the preceding schedules; cheese; fruits, preserved; paper pulp; perfumery and essences; articles of pottery and earthenware now classified under Paragraph 20 of the Customs Tariff of the Republic of Cuba; porcelain; soaps, other than common, now classified under Paragraph 105 of the Customs Tariff of the Republic of Cuba; umbrellas and parasols; dextrine and glucose; watches; wool and manufactures thereof; silk and manufactures thereof; rice; cattle.

ARTICLE V.

It is understood and agreed that the laws and regulations adopted, or that may be adopted, by the United States and by the Republic of Cuba, to protect their revenues and prevent fraud in the declarations and proofs that the articles of merchandise to which this convention may apply are the product or manufacture of the United States and the Republic of Cuba, respectively, shall not impose any additional charge or fees therefor on the articles imported, excepting the consular fees established, or which may be established, by either of the two countries for issuing shipping documents, which fees shall not be higher than those charged on the shipments of similar merchandise from any other nation whatsoever.

ARTICLE VI.

It is agreed that the tobacco, in any form, of the United States or of any of its insular possessions, shall not enjoy the benefit of any concession or rebate of duty when imported into the Republic of Cuba.

ARTICLE VII.

It is agreed that similar articles of both countries shall receive equal treatment on their importation into the ports of the United States and of the Republic of Cuba, respectively.

ARTICLE VIII.

The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries: Provided, That while this convention is in force, no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 24, 1897, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897.

ARTICLE IX.

In order to maintain the mutual advantages granted in the present convention by the United States to the Republic of Cuba and by the Republic of Cuba to the United States, it is understood and agreed that any tax or charge that may be imposed by the national or local authorities of either of the two countries upon the articles of merchandise embraced in the provisions of this convention, subsequent to importation and prior to their entering into consumption in the respective countries, shall be imposed and collected without discrimination upon like articles whencesoever imported.

ARTICLE X.

It is hereby understood and agreed that in case of changes in the tariff of either country which deprive the other of the advantage which is represented by the percentages herein agreed upon, on the actual rates of the tariffs now in force, the country so deprived of this protection reserves the right to terminate its obligations under this convention after six months' notice to the other of its intention to arrest the operations thereof.

And it is further understood and agreed that if, at any time during the term of this convention, after the expiration of the first year, the protection herein granted to the products and manufactures of the United States on the basis of the actual rates of the tariff of the Republic of Cuba now in force, should appear to the government of the said Republic to be excessive in view of a new tariff law that may be adopted by it after this convention becomes operative, then the said Republic of Cuba may reopen negotiations with a view to securing such modifications as may appear proper to both contracting parties.

ARTICLE XI.

The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, and the convention shall go into effect on the tenth day after the exchange of ratifications, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same.

This convention shall not take effect until the same shall have been approved by the Congress.

In witness whereof we, the respective Plenipotentiaries, have signed the same in duplicate, in English and Spanish, and have affixed our respective seals, at Havana, Cuba, this eleventh day of December, in the year one thousand nine hundred and two.

TASKER H. BLISS. [SEAL.]
CARLOS DE ZALDO. [SEAL.]
JOSÉ M. GARCIA MONTES. [SEAL.]

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58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1.

RECIPROCITY WITH CUBA.

NOVEMBER 13, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. PAYNE, from the Committee on Ways and Means, submitted the following

REPORT.

[To accompany H. R. 1921.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 1921) to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December, in the year 1902, having had the same under consideration, report the same back with a recommendation that the bill pass.

The enactment of this bill into law is necessary to give effect to the convention providing for reciprocal trade between this country and Cuba. This results not merely because the convention itself provides that it "shall not take effect until the same shall have been approved by the Congress," but because the Constitution gives no power to the President and the Senate to make a convention or treaty changing the rates of revenue. That power is expressly lodged in the Congress (sec. 8, Article I of the Constitution). Section 7 of the same article provides that "all bills for raising revenue shall originate in the House of Representatives." It is not intended here to cite authorities or advance reasons on this proposition. The records of Congress abound with unrefuted arguments on the affirmative of this contention, and the practice of Congress has been uniformly in the same direction. The reciprocity treaties with Great Britian in reference to our trade relations with Canada and with Hawaii were, by their terms, each dependent upon the passage by the Congress of appropriate legislation reducing the duties and making provision for the carrying into effect of their terms. Every treaty requiring the payment of money, from the Jay treaty to the treaty of Paris with Spain, has been referred to the Congress to make the necessary appropriation of money. Foreign countries in making treaties with us are bound to take notice of this requirement of our Constitution, and, whether it is expressed in the treaty or not, the whole matter is subject to the necessary legislation by the Congress.

The convention to which this bill refers is by its terms not to "take effect until the same shall have been approved by the Congress." If, in the judgment of Congress, the terms of the treaty are to become the law of the land it is necessary, both by the terms of the convention and by force of the express requirement of the Constitution, that Congress pass the requisite legislation authorizing the change in our revenue laws.

To render the convention valid it is necessary to enact into law the language of the proviso of Article VIII, "and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897." To enact these words into law would be to admit, by implication, that duties could be lowered by treaty or convention. Your committee can not consent to this proposition, nor is it believed that such an admission would be sanctioned by any member of the House. The bill, therefore, adds the following saving clause at the conclusion of this proviso:

And provided further, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that customs duties can be changed otherwise than by an act of Congress originating in said House.

This proviso, in the judgment of your committee, preserves the contention of the House as to its rights and prerogatives under the Constitution.

Legislation upon this subject was very properly initiated in the House at the first session of the Fifty-seventh Congress. A bill was introduced early in the session "to provide for reciprocal trade relations with Cuba." That bill authorized the President to make a commercial agreement with Cuba, in most of its essentials identical with this convention now proposed. That bill was reported by this committee March 31, 1902, and finally passed the House with amendments April 19, 1902. The bill failed in the Senate, but the Executive took up the negotiations which have resulted in this convention, which was ratified by the Senate in March last.

This subject was first brought to the attention of Congress by the President in his message at the beginning of the first session of the Fifty-seventh Congress. He said:

Elsewhere I have discussed the question of reciprocity. In the case of Cuba, however, there are weighty reasons of morality and of national interest why the policy should be held to have a peculiar application, and I most earnestly ask your attention to the wisdom—indeed, to the vital need—of providing for a substantial reduction in the tariff duties on Cuban imports into the United States. Cuba has in her constitution affirmed what we desired—that she should stand, in international matters, in closer and more friendly relations with us than with any other power; and we are bound by every consideration of honor and expediency to pass commercial measures in the interest of her material well-being.

These words were reenforced by the Secretary of War in his report, as follows:

Aside from the moral obligation to which we committed ourselves when we drove Spain out of Cuba, and aside from the ordinary considerations of commercial advantage involved in a reciprocity treaty, there are the weightiest reasons of American public policy pointing in the same direction; for the peace of Cuba is necessary to the peace of the United States; the health of Cuba is necessary to the health of the United States; the independence of Cuba is necessary to the safety of the United States. The same considerations which led to the war with Spain now require that a commercial arrangement be made under which Cuba can live. The condition of

the sugar and tobacco industries in Cuba is already such that the earliest possible action by Congress upon this subject is desirable.

The President has deemed the subject of sufficient importance to convene an extraordinary session of Congress in order that the convention may become effective before the commencement of the harvest of the new sugar crop in December. In his message to the present Congress he forcibly states his reasons for the passage of this legislation:

> The treaty submitted to you for approval secures to the United States economic advantages as great as those given to Cuba. Not an American interest is sacrificed. By the treaty a large Cuban market is secured to our producers. It is a market which lies at our doors, which is already large, which is capable of great expansion, and which is especially important to the development of our export trade. It would be indeed shortsighted for us to refuse to take advantage of such an opportunity, and to force Cuba into making arrangements with other countries to our disadvantage.
>
> This reciprocity treaty stands by itself. It is demanded on considerations of broad national policy as well as by our economic interest. It will do harm to no industry. It will benefit many industries. It is in the interest of our people as a whole, both because of its importance from the broad standpoint of international policy and because economically it intimately concerns us to develop and secure the rich Cuban market for our farmers, artisans, merchants, and manufacturers. Finally, it is desirable as a guaranty of the good faith of our nation toward her young sister Republic to the south, whose welfare must ever be closely bound with ours. We gave her liberty. We are knit to her by the memories of the blood and the courage of our soldiers who fought for her in war; by the memories of the wisdom and integrity of our administrators who served her in peace and who started her so well on the difficult path of self-government. We must help her onward and upward; and in helping her we shall help ourselves.
>
> The foregoing considerations caused the negotiation of the treaty with Cuba and its ratification by the Senate. They now with equal force support the legislation by the Congress which by the terms of the treaty is necessary to render it operative. A failure to enact such legislation would come perilously near a repudiation of the pledged faith of the nation.

This legislation will result in no harm to any American industry. Articles the product of this country like the articles embraced in this convention now imported from Cuba receive the very highest protection of any in the same schedule. The duty on sugar was placed above the protective point for the purpose of revenue. The House tariff bill provided expressly for a reduction in the interests of reciprocal trade agreement, which it authorized the President to make. The duty on tobacco has for years been much higher than any necessity required on account of the competition of Cuban tobacco. The reduction in this bill leaves it amply protected. The present rate was intended primarily for protection against the Sumatra leaf, 1 pound of which, for wrapper purposes, will go nearly as far as 4 pounds of any other tobacco. The reduction of duty in this bill will injure no American industry.

On the other hand, we can but make great gains in our export trade to Cuba. On account of the depression caused by the low price of sugar, although six or seven thousand men were employed in railroad building and there were large importations of railroad material and equipment during the year, Cuban imports have fallen off from an average of more than $66,000,000 in the preceding three years to about $60,000,000 in 1902. Of these imports we furnished less than 42 per cent; we should furnish at least 80 per cent. Under the preferential tariff rate provided in the convention we ought in a short time to supply practically the Cuban market. We produce everything she needs and buys. We shall have an advantage of from 25 to 40 per cent dis-

count on tariff rates on articles with which we do not now supply her people. This legislation will certainly tend to bring prosperity to Cuba and our imports must increase and our market broaden. Our trade will advance from year to year, as it did under the former period of reciprocal agreement (1891–1894) inaugurated under the McKinley Act. This legislation will bring rich results both to Cuba and to the United States, and will fittingly complete one of the proudest chapters in our history, which chronicles the sacrifices of a great nation for an oppressed and distressed people at our very door.

58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 1, Part 2.

RECIPROCITY WITH CUBA.

NOVEMBER 16, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. WILLIAMS, of Mississippi, from the Committee on Ways and Means, submitted the following as the

VIEWS OF THE MINORITY.

[To accompany H. R. 1921.]

We, minority members of the Committee on Ways and Means, make the following report of our views concerning H. R. 1921, being a bill entitled "A bill to carry into effect a convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two," introduced in the House of Representatives on the 12th day of November, 1903, by Mr. Payne, of New York, and referred to the Committee on Ways and Means:

We believe that the bill as reported by the Committee on Ways and Means to the House ought to have been amended in committee before being reported and ought now to be amended in the House before its passage, as follows:

By striking from the bill the following language, beginning in line 15, page 2, and ending in line 2, page 3:

Provided, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admitted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States, approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven:

and by inserting the following in lieu thereof:

That upon the making of said agreement and the issuance of said proclamation and while said agreement shall remain in force there shall be levied, collected, and paid, in lieu of the duties thereon now provided by law on all sugars above No. 16 Dutch standard in color and all sugar which has gone through a process of refining imported into the United States, one cent and eight hundred and twenty-five one-thousandths of one cent per pound.

Our objection to the language proposed to be stricken out is twofold:

First, as a general principle, one Congress has no right to attempt to bind a succeeding Congress, as is attempted in this bill in the case of sugars imported from Cuba, nor to attempt to bind the treaty-making power of the United States in a succeeding Congress or under a succeeding administration, as is attempted in the bill in the case of sugars imported from other foreign countries. We do not believe that the language proposed to be stricken out is, or could be made, of binding force and effect, even if enacted into law. It is, ostensibly, at any rate, a waiver, to some extent, of the general right of abrogation and establishes a precedent of evil import.

In the second place, we are not willing to bind ourselves nor silently to acquiesce in an attempt—although legally and morally ineffectual to bind us—to continue in existence, at a given fixed rate, a duty upon any product imported into the United States for any definite period, whether the article be sugar or anything else, or whether it be the product of the island of Cuba, or of any other country, or of all other countries.

Public needs and interests may at any moment suggest or require a different treatment of tariff schedules. A schedule is not a fetich to be worshiped. We hope, therefore, the House will strike out the provision.

We think, in the next place, that there ought to be inserted in lieu of the provision proposed to be stricken out, or elsewhere in the bill, the language proposed to be inserted by the amendment above referred to, because, in our opinion, we would thereby deprive the great sugar trust of this country of some of its power to extort from the consumer, curtail its power to bear down the price of the raw material, thereby injuring the sugar planter, and lessen its ability to dictate to wholesale and retail dealers in sugar the manner in which they shall do business and the price at which they shall sell refined sugar.

The House during the Fifty-seventh Congress took this view and passed an amendment identically worded as now proposed by us. The House took that view after a full investigation and a comparatively full discussion of the question, and the very treaty proposed to be put in force by this bill (H. R. 1921) would have been in force now had all those charged with the duty of legislation in other branches of the Government been willing to see the burden upon the American consumer of sugars and other products imported from Cuba into the United States lightened, or had they been willing to see the Cuban market for American products enlarged, even though at some expense to the great sugar trust of the United States. The only injury to the trust itself even would have been to lessen to a small degree its power to extort from the consumer and to tyrannize over producers and commerce.

If the amendment we propose to offer shall be adopted we shall gladly vote for the bill, believing that it will at one and the same time diminish to a certain extent the trust evil, furnish a better and wider and further market for American agricultural and manufactured products in Cuba, and benefit the American consumer of Cuban products. These are three consummations devoutly to be wished.

If the amendment shall not be adopted we still recommend the passage of the bill despite its bad features, because we think that the good

to be done by its passage will far overbalance the evil which will result from a failure to take advantage of the opportunity to diminish the power of the sugar trust and the evil resulting from the bad precedent proposing, in effectually it is true, to prevent the country from still further reducing the duties upon Cuban sugars and upon sugars from other countries whenever it shall appear wise and expedient to do so by reciprocal treaty agreement or statute law.

Believing, as we do, that commerce ought to be as nearly untrammeled as possible, consistently with the needs of a revenue for economical and effective governmental administration, and consistently with a desire not to revolutionize existing conditions by destroying honest, legitimate, and nonmonopolistic enterprises, we find in this bill an affirmance of that principle, a step in the right direction and, furthermore, a recognition of the fact that a decrease of governmental tolls levied upon international commerce constitutes a benefit to the countries between which the commerce is carried on.

Charged with the duty of legislating for the benefit of the American people, as we are, and friends to the new-born Republic of Cuba, desiring her prosperity, we recognize that this bill will, to some extent, relieve the unnecessary burdens upon both Americans and Cubans, enabling the Americans to buy Cuban products at more reasonable prices and enabling the Cubans to buy American products at more reasonable prices, thereby enlarging the volume of trade between the two countries in both directions.

We regret that the party in power has not seen its way to confer still further benefits upon citizens of both nations by providing for even freer and yet more untrammeled and unrestricted commerce between them. As long as the present party is in power we can perhaps hope for tariff reductions and revision only from reciprocity treaties. It is a piecemeal process, but it is better than no process at all. We hail it as a harbinger of future reciprocity treaties with other countries, especially those upon the American Continent, and notably our neighbor to the north, the Dominion of Canada.

Commercial wars are detrimental, sometimes destructive. They are wars in which there can not be a victor on either side—wars as a result of which both sides endure defeat. Friendly relations between peoples can not be as certainly secured in any other way as by the reciprocal benefits of trade and commerce. Men of different nations bound to one another by large and valuable trade relations are bound by the closest tie of a materialistic character known to human nature—the tie of self-interest. They have given a mutual bond to keep the peace, and strenuous "jingoism" itself hesitates, under such circumstances, to disturb it.

We recommend the passage of the amendment referred to above, and failing in that, having filed our protest by voice and vote against the right or power to bind our future conduct, we still recommend the passage of the bill.

JOHN S. WILLIAMS.
CLAUDE A. SWANSON.
GEO. B. MCCLELLAN.
CHAMP CLARK.

58TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT 1, Part 3.

RECIPROCITY WITH CUBA.

NOVEMBER 16, 1903.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. COOPER, of Texas, from the Committee on Ways and Means, submitted the following

VIEWS.

[To accompany H. R. 1921.]

VIEWS OF MR. COOPER, OF TEXAS.

Since filing my objections to the bill of the Fifty-seventh Congress (H. R. 12765) providing for commercial reciprocal relations with Cuba, I have carefully considered the subject further, from every point of view, with the result that my objections to the Cuban reciprocity project have become only strengthened and confirmed, and I can not approve or support the bill (H. R. 1921) reported in this extraordinary session of the Fifty-eighth Congress by the majority of the Ways and Means Committee.

In the light of all the facts and arguments pertaining to the subject, so far as I can apprehend and understand them, the bill and the purpose for which it is framed will not prove beneficial to the people of either Cuba or the United States, nor is the measure demanded by any considerations of honor, duty, or even expediency; but on the contrary the bill, in my judgment, will tend, if enacted, to the injury of our own people, if not also the Cubans themselves.

At the outset, grave doubts as to the constitutionality of the bill present themselves. The subject-matter of the pending treaty, or "commercial convention," relates entirely to a question of revenue, and by the Constitution the initiative in all matters touching the revenue is given to the House of Representatives. Waiving the point as to the right of the Senate to exercise the treaty-making power when the treaty under consideration is one solely affecting the revenue, it is now claimed by the supporters of the proposed legislation that the right of the House of Representatives to the initiative in revenue matters is preserved in this case by the introduction of this bill in the House in lieu of similar initiative action in the Senate.

But it appears to me to be plainly a subterfuge to contend that this is a bill of the House, when its only purpose and effect is to ratify a treaty or law already perfected in form by the other branch of Congress, and practically already ratified in that branch, under the treaty-making power conferred by the Constitution, which treaty or law the House is now simply called upon by the majority to accept as a *fait accompli*, without any voice as to the wording of the original document, and even without the privilege of amending or modifying the terms laid down by its constructors. It certainly appears an unconstitutional proceeding thus to tie the hands of the House of Representatives in a matter of legislation affecting the revenue.

Aside from this point, the proposed reciprocity agreement, in my judgment, is open to many and strong objections on political and practical grounds.

The proposed reciprocity is both undemocratic and unrepublican. It is undemocratic in that the democratic theory of taxation is that all taxation should be equal and uniform, and that bounties or subsidies to certain favored individuals or interests are unjust and illegal. Reciprocity, in its very nature, is an indirect bounty or subsidy. In the case at issue the beneficiaries of the subsidy would be sugar-refining interests and some other special interests affected by the proposed tariff rebates, and the amount of benefit reaped by them would have to be made up for by taxation of the whole people upon some other articles not covered by the treaty.

The proposed reciprocity is unrepublican in that it deliberately seeks to injure and interfere with a home industry by lowering tariff rates which protect that industry, and thus directly inviting and stimulating a rival foreign industry. It is republican only in so far as it is preferential and discriminating. It is a long step toward a free-trade South and a protected East and North, in that it trades off agricultural tariffs to secure foreign markets for the trusts in manufactured goods, an odious doctrine to a Democrat who believes in equal rights to all and special privileges to none; violative of the declaration of the Chicago Democratic platform of 1896, which declared for a tariff for revenue "so levied as not to discriminate against sections."

A reciprocity treaty of the nature of the pending treaty—a preferential compact between two individual nations—violates the fundamental principles of both democracy and republicanism. It violates both the tariff-for-revenue principle and the tariff-for-protection principle. In the present case it violates the protection principle because it proposes to allow the introduction into this country, at reduced tariff rates, of large quantities of sugar and other commodities extensively produced in the United States. It violates the tariff-for-revenue principle because it deliberately lops off about $8,000,000 of our annual revenue without benefit to the consumer, takes this amount out of our Treasury and gives it to certain favored beneficiaries, and compels our taxpayers to make up the deficiency thus arbitrarily created.

The bill, in its practical operation, can not benefit the consumer, the producer, or the Treasury. The increased output of sugar from Cuba will be controlled by the sugar trust, and it has been proved with sufficient conclusiveness that in all probability the benefits of the proposed rebate would be appropriated by the managers of the trust, and that even if a portion thereof should find their way to the producers in Cuba the Cubans themselves would not be benefited because fully 70 per cent of the planters in the island are foreigners—Americans, Spaniards, Germans, etc.

The trust will continue to control not only the output and the producer, but also the price and the consumer. The increase of the inflow of sugar from Cuba will not in the least diminish the price to the American consumer. The price of sugar here depends on the world-price, as fixed at Hamburg. It is not affected at all by the amount of the supply in our home market. The consumer would thus be without benefit in the way of reduced price of sugar, and would be positively injured by being compelled to pay taxes to the amount of about $8,000,000 to make up the revenue diverted by this bill, or treaty,

from the Treasury of the United States into the pockets of the managers of the sugar trust.

One of the strongest objections to the bill lies against the extraordinary supplemental provision prohibiting the House of Representatives from making any further reductions in the duty on sugar during the life of the treaty. In other words, if the House sanctions this instrument, and if the bill becomes a law, the House spontaneously abrogates its constitutional right to initiate alterations in the tariff on sugar, and binds itself not to make any such alterations in that tariff for at least five years to come. I can not but consider such a proposition as this, involving the surrender of the prerogatives and the abandonment of the duties of this branch of the Government, as being wholly unprecedented in its audacity.

I do not find that this country is under any moral obligation, expressed or implied, to enact this measure. There is nothing in the treaty of Paris or in the so-called Platt amendment calling for it. We have already done all, and much more than all, that we were in honor bound to do for the benefit of Cuba. There is nothing in law or in morals justifying the contention that Cuba is a political dependency of the United States, or that the United States is morally bound to insure and guarantee the success of the Cuban Republic. This theory is not only unsound but also humiliating to both countries, and it is very properly resented and repudiated by the leading Cubans themselves.

The plea that this special favor to the Cubans should be granted as an act of charity or benevolence, because the Cubans are in desperate financial straits and on the verge of political collapse and commercial failure, is found on examination to be equally unsound. In fact, the Cubans are now exceedingly prosperous, and their success, both politically and commercially, is assured. This is proved by the most recent official publications of the Cuban authorities and also by numerous publications of our own Government, and also by the testimony of financial and commercial statistics gathered from many independent and impartial sources, not only in this country and Cuba but also in Europe.

The only great trouble confronting the Cubans is the low price of sugar, but this will be only partially met by the passage of this bill, and the only efficacious remedy for this trouble will be found in greater diversification of crops in Cuba, and a turning over of certain portions of the Cuban sugar lands to the production of coffee, fruits, etc., even as these same lands were formerly turned over from coffee to sugar production, when the prices of sugar ran very high.

Cuba's foreign trade has gone up from about $50,000,000 in 1896 and 1897 to about $125,000,000 in 1902, and will, in all probability, amount to at least $150,000,000 in the calendar year 1903. It is increasing of late by leaps and bounds. The exports of Cuban sugar to this country in the fiscal year 1902, were 439,000 tons, and in the fiscal year 1903 they were more than 1,000,000 tons. The value of the tobacco export from Cuba to this country in 1902 was less than $11,000,000, while that of the present year has exceeded $13,000,000. The export of pineapples and other fruits from Cuba has doubled since 1902. The value of Cuban products and exports in the line of mineral ores, lumber, etc., is increasing annually at a rapid rate.

Between 1899 and 1903 Cuba's total exports of sugar and molasses have increased in value from $19,000,000 to over $30,000,000; of

tobacco from $21,000,000 to $25,000,000; of iron ore, asphalt, and other mineral products, from $500,000 to $2,000,000; of fruits and vegetables from $800,000 to $1,900,000, and of all kinds of merchandise from $45,000,000 to $65,000,000 in 1902, with a certainty of a great further advance in 1903.

This expansion of Cuba's foreign trade is not only with this country, but with the European countries. The statistics show that between 1899 and 1902 Cuba's exports to the United Kingdom increased more than 100 per cent, and her exports to Germany more than 150 per cent. Altogether, Cuba seems to be doing very well, and not to be in pressing need of any special benevolences.

Legislation such as is proposed in this bill will assuredly anger and alienate other friendly powers. It is a measure expressly calculated and intended to assist this country and one other country at the expense of all the other countries. If it should prove of material benefit to Cuba and the United States in any respect, in so far it would prove proportionally injurious to the other nations. I can not see how we should gain by courting a little additional trade with Cuba, if we thereby invite retaliation and reprisals by other nations.

There is nothing going to prove that our export trade to Cuba would be materially benefited by the proposed legislation. Our exports to Cuba now are as large, if not larger than they were under the reciprocity of 1891–94. The Cuban tariff is low, and affords no material bar to the purchase by the Cubans of anything they want, in whatever market their tastes are best suited. With or without reciprocity, they will continue buying their shoes from Spain and their textile goods from England, because they fancy those products.

This bill does not require Cuba to enact stringent immigration laws, like those of the United States. As a consequence, cheap labor will naturally gravitate to Cuba and produce sugar there in competition with the high-priced labor of the United States.

In thus presenting some of my principal objections to the pending bill and treaty, I wish to include, in conclusion, the views which I offered in opposition to the previous reciprocity bill (H. R. 12765) on the 5th of April, 1902, as follows:

MINORITY VIEWS.

[To accompany H. R. 12765.]

After giving due attention to the evidence submitted to the Ways and Means Committee in support of and in opposition to legislation proposed by the President and Governor-General Wood for the benefit of Cuba, I am unable to give my support to the bill reported by the majority of the Ways and Means Committee.

In my judgment the bill as reported does not commend itself to the judgment of anyone at interest and will not be effective for any good purpose whatever, while it is open to many serious objections. Had the Ways and Means Committee reported a bill removing the differential in favor of refined sugar, which differential gives the American Sugar Refining Company, commonly called the "sugar trust," a monopoly, enabling it to fix the price of raw sugar to the producer and refined sugar to the consumer, and had the bill proposed to give any relief to the consumer I would gladly have supported the bill accompanied with a proper reduction upon the present tariff upon sugar.

The form in which the bill has been reported has converted a pretended sympathy for Cuba into a measure which will not be of benefit to Cuba, will not relieve the American consumer from taxation or lessen the cost of his consumption, but redound largely to the interest of the "sugar trust" and other "manufacturing trusts" at the expense of American agricultural and horticultural interests. I submit—

First. That the reduction of 20 per cent upon the sugar schedule, as proposed by the bill, will be of no practical benefit to the Cubans, and with this statement Presi-

dent Roosevelt, Governor-General Wood, and other advocates of a reduction in our tariff upon sugar are agreed.

Second. That there is no such distress in Cuba as to demand any change in our tariff laws, and this statement is derived from a fair analysis of all the testimony before the Ways and Means Committee

Third. This Government is under no obligations, by reason of the Platt amendment, to make tariff concessions to Cuba not made to all other countries alike. We have expended $250,000,000 in giving Cuba her liberty, and the conditions imposed upon her do not prevent the making of commercial treaties with any other country. In fact, the total production of sugar in Cuba to-day finds a market in the United States simply because, even under present tariff laws, she receives more for her sugar here than she could elsewhere.

Fourth. No reduction in taxation upon the American consumer will be had should the proposed bill become a law, and it is not contended by any person well informed that the consumer will pay any less here by reason of the proposed reduction. The present differential in favor of refined sugar prohibits the refining of sugar in Cuba, and compels the shipment of her sugar in a raw state to this country where the "sugar trust" is the chief purchaser. It is not believed that the trust will give Cuba the benefit of this reduction. On the contrary, it is more likely, the price of sugar being fixed in Hamburg, that the "sugar trust" will not only pocket this reduction, but will use it as a club to compel the producers of sugar in the United States to sell their raw sugar to the trust at an equivalent reduction without any concession whatever to the consumer.

Fifth. The proposed bill will simply take from the Federal Treasury about $8,000,000 of annual revenue and transfer it to the coffers of the "sugar trust," without relief from excessive taxation to the citizens of the United States or benefit to the consumers of sugar.

Sixth. It inaugurates the policy of reciprocity which, as now advocated by the Republican party, is as undemocratic as a tariff for protection, and which has been aptly called "the handmaiden of protection." The Democratic view has always been that tariffs should be laid fairly and equitably to raise revenue for the support of the Government. It is as much a perversion of the taxing power to use it as a means to dicker and barter with other countries as it is to use it to protect favored industries against foreign competition. Tariffs should be framed for revenue and should be applied to all nations alike, enabling them to trade with us upon terms of equality. Instead of "Peace, amity, and commerce with all nations, entangling alliances with none," we will enter upon a policy provocative of jealousies, dissensions, reprisals, and retaliation by foreign powers toward this country, and in the vortex tariff reform and tariff for revenue will be lost sight of, to be supplanted by unscientific, unfair, and unequal tariff schedules. Reciprocity trade relations will necessarily result in a struggle here upon the part of powerful industries to obtain trade concessions abroad at the expense of other industries which are less powerful at court, and in such a contest the powerful interests will be supreme and the weaker "go to the wall." As tersely stated by a distinguished member of Congress, "Free trade for the farmer, protection for the trusts."

Seventh. The proposed bill is not a revenue measure, not a reduction of taxation, but a bill to give double protection to the great interests which refuse to reduce their exactions upon the American people. The present extravagantly high protective tariff is maintained in favor of all the great trusts in the United States which are now selling abroad for less than they are selling at home, and still shields them from foreign competition here, while Cuba is required to give them a differential of 20 per cent against all other countries to protect them there.

Eighth. The proposed bill will force Cuba to abandon her present revenue tariff and adopt a protective system, and that, too, not for her own benefit, but at the cost of her consumers, to protect American manufacturers against foreign competition in the Cuban market. The present tariff in force in Cuba is purely a revenue measure, and yields barely sufficient for her purposes. If this bill becomes a law, Cuba will be compelled to meet its provisions, not by reducing her tariff upon imports from the United States, but by raising her tariff upon the products of countries other than the United States brought into Cuba, and the Democrat who votes for this bill will vote for a measure which takes millions of dollars out of the Federal Treasury and presents it to the "sugar trust" without a dollar's benefit to the American consumer, and to force Cuba to abandon a tariff for revenue only and adopt a protective tariff system for the benefit of the greedy interests which have fattened upon exactions wrung from our citizens, and whose rapacity now reaches out to oppress the Cubans under the guise of "a measure to relieve distress."

S. B. COOPER.

58TH CONGRESS, 1st Session. | SENATE. | REPORT No. 2.

RECIPROCITY WITH CUBA.

NOVEMBER 23, 1903.—Ordered to be printed.

Mr. CULLOM, from the Committee on Foreign Relations, submitted the following

REPORT.

[To accompany H. R. 1921.]

The Committee on Foreign Relations, to which was referred "An act to carry into effect a convention between the United States and the Republic of Cuba," signed on the 11th day of December in the year 1902, reports the same to the Senate, with the recommendation that the act be passed.

24213—06——1

(The following correspondence is reprinted from certified copies of the records of the State Department:)

Copy (B).
No. 65.]

DEPARTMENT OF STATE,
Washington, December 18, 1903.

SIR: I have the honor to inclose herewith a copy of the President's proclamation of the reciprocal Commercial Convention of December 11, 1902, between the United States and Cuba and a copy of the act approved December 17, 1903, to carry the convention into effect.

Referring to the requirement of the act that the President shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention, I have the honor to request that you will supply me with a statement that Cuba has made provision to give full effect to the articles of the convention, giving also the date when the convention shall go into effect in Cuba, which date should be the same as that fixed by the President for the United States.

Accept, Mr. Minister, the renewed assurances of my highest consideration.

Inclosures as above.

FRANCIS B. LOOMIS,
Acting Secretary.

Señor Don GONZALO DE QUESADA,
Etc., etc., etc.

No. 107.]

LEGACIÓN DE CUBA,
Washington, D. C., Diciembre 18 de 1903.

EXCELENCIA: Tengo el honor de acusar recibo de la atenta Nota de V. E. No. 65 de fecha de hoy, con la que me remite copia de la Proclama dada por S. E. el Presidente Theodore Roosevelt del Tratado de Reciprocidad que, con fecha 11 de Diciembre de 1902, se celebró entre Cuba y los Estados Unidos, y copia de la Ley aprobada en 17 de Diciembre de 1903, para poner en vigor la citada Convención.

Con esta fecha he recibido instrucciones de mi Gobierno, por cable, para que comunique á S. E. que en la "Gaceta Oficial" de este mismo dia se publicará la Proclama de S. E. el Presidente Tomás Estrada Palma, firmada ayer 17, poniendo en vigor, en la República de Cuba, desde el dia 27 de los corrientes, el citado Convencio; todo lo cual me es grato trasladar á V. E., contestando así su atenta Nota sobre las pruebas satisfactorias, en ella pedi das, de que el Gobierno de Cuba había tomada las medidas que dispone la Ley aprobada el 17 de Diciembre para poner en vigor el Tratado y la fijación de la fecha en que ha de comenzar á regir en Cuba, la cual es la misma en que el Convencio ha de hacerse efectivo en los Estados Unidos.

Tan pronto reciba la mencionada "Gaceta" tendré el honor de remitirla á V. E.

Aprovecho esta oportunidad para reiterar á V. E. el testimonio de mi más alta y distinguida Consideración.

GONZALO DE QUESADA.

Al Hon. FRANCIS B. LOOMIS,
Secretario de Estado Interino.

(C) Copy.

[Translation.]

CUBAN LEGATION,
Washington, D. C., December 18, 1903.

EXCELLENCY: I have the honor to acknowledge receipt of your excellency's esteemed note, No. 65, of to-day's date, with which you transmit copy of the proclamation by his Excellency President Theodore Roosevelt of the reciprocity treaty which, on the 11th of December, 1902, was entered into between Cuba and the United States, and copy of the law approved on the 17th of December, 1903, for putting the aforesaid convention into effect.

I have received instructions by cable to-day from my Government to inform your excellency that there will be published in the Official Gazette of to-day the proclamation of his Excellency President Tomas Estrada Palma, signed yesterday, the 17th, putting the aforesaid convention into effect in the Republic of Cuba from and after the 27th instant; all of which I am pleased to communicate to your excellency, and so answer your esteemed note concerning the satisfactory evidence therein requested that the Cuban Government has taken the measures required in the law approved on the 17th of December for putting the treaty into force and for the determination of the date when [the convention] shall go into effect in Cuba, which is the same as that on which it shall be in force in the United States.

As soon as I receive the aforesaid Gazette I shall have the honor to transmit it to your excellency.

I avail myself of this opportunity to reiterate to your excellency the assurance of my highest and most distinguished consideration.

GONZALO DE QUESADA.

To the Honorable FRANCIS B. LOOMIS,
Acting Secretary of State.

No. 108.] LEGACIÓN DE CUBA,
Washington, D. C., Diciembre 22 de 1903.

EXCELENCIA: Tengo el honor de remitir, adjunta, á V. E. la "Gaceta Oficial de la República de Cuba," fechada el 18 de Diciembre de 1903, en que aparece la Proclama de S. E. el Presidente T. Estrada Palma, fechada el 17 de Diciembre del mismo año, declarando que el Tratado

de Reciprocidad, concluido y firmado en 11 de Diciembre de 1902, empezará á regir en la República de Cuba desde el dia 27 del mes actual.

Aprovecho esta oportunidad para reiterar á V. E. el testimonio de mi más alta y distinguida consideración.

GONZALO DE QUESADA.

Anexo:
No. 145 Ano. 2°. de la "Gaceta Oficial de la Rep. de Cuba.
A. S. E. el Hon. FRANCIS B. LOOMIS,
Secretario de Estado Interino, etc., etc., etc.

[Translation.]

No. 108.] CUBAN LEGATION,
Washington, D. C., December 22, 1903.

EXCELLENCY: I have the honor to transmit herewith to your excellency the Official Gazette of the Republic of Cuba, dated the 18th of December, 1903, in which appears the proclamation of his excellency, President T. Estrada Palma, dated the 17th of December of the same year, declaring that the treaty of reciprocity, concluded and signed on the 11th of December, 1902, shall take effect in the Republic of Cuba from and after the 27th day of this month.

I avail myself of this opportunity to renew to your excellency the assurance of my highest and most distinguished consideration.

GONZALO DE QUESADA.

Appended:
Official Gazette of the Republic of Cuba, No. 145, 2d year.

To his excellency the Hon. FRANCIS B. LOOMIS,
Acting Secretary of State, etc., etc., etc.

[From the Gaceta Oficial de la República de Cuba, Habana, viernes 18 de diciembre de 1903.]

SECRETARIA DE ESTADO Y JUSTICIA.

DEPARTAMENTO DE ESTADO.

TOMAS ESTRADA PALMA,

Presidente de la República de Cuba.

A sus Habitantes, Sabed:

Que el día 11 de Diciembre de 1902 se concluyó y firmó en la Ciudad de la Habana, por medio de plenipotenciarios debidamente autorizados al efecto, un Tratado de Reciprocidad Comercial entre la República de Cuba y los Estados Unidos de América; el cual Tratado, con las modificaciones introducidas en el y aprobado definitivamente por el Senado de la República de Cuba en 28 de Marzo de 1903, es de la forma y del tenor siguientes:

* * * * * * *

Que de conformidad con el protocolo adicional suscrito en Washington el 26 de Enero de 1903, las ratificaciones fueron canjeadas en dicha ciudad el 31 de Marzo del corriento año.

Que el Congreso de los Estados Unidos de América aprobó el mencionado Tratado, de acuerdo con lo prevenido en el Artículo XI del mismo.

Y que el presente Tratado empezará á regir en la República desde el día 27 del mes actual.

Por tanto, mando se publique y se le de entero cumplimiento.

Habana, Palacio de la Presidencia, á 17 de Diciembre de 1903.

T. ESTRADA PALMA,
Presidente.

CARLOS DE ZALDO,
Secretario de Estado y Justicia.

[Translation.]

OFFICE OF STATE AND JUSTICE.

DEPARTMENT OF STATE.

TOMAS ESTRADA PALMA,
President of the Republic of Cuba.

To the people. Be it known:

That on the 11th of December, 1902, there was concluded and signed in the city of Habana, through plenipotentiaries duly authorized for the purpose, a treaty of commercial reciprocity between the Republic of Cuba and the United States of America, which treaty, with the changes introduced in it and finally approved by the Senate of the Republic of Cuba, is of the form and tenor following:

* * * * * * *

That in conformity with the additional protocol signed in Washington on the 26th of January, 1903, the ratifications were exchanged in said city the 31st of March of the present year.

That the Congress of the United States of America approved the said treaty in accordance with the provision of Article XI of the same.

And that the present treaty shall go into effect in the Republic from the 27th day of this month.

Therefore, I command that it be published in order that it may be completely fulfilled.

Habana, Palace of the President, December 17, 1903.

T. ESTRADA PALMA,
President.

CARLOS DE ZALDO,
Secretary of State and Justice.

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